APPENDIX A

Response to Petition for Certiorari

FRED M. HOOEY, Judge of the 180th District Court of Harris County, Texas (formerly named Criminal District Court Number Six of Harris County, Texas) joined herein by CAROL S. VANCE, District Attorney of Harris County, Texas, respondents in the above cause, respond to the Petition for Certiorari herein, and respectfully say:

I

Respondents are unable to ascertain from the documents served on them whether the petition is for certiorari to the Supreme Court of Texas or to the Court of Criminal Appeals of Texas (incorrectly called Criminal Court of Appeals in the petition) or both said Courts. Further, respondents were not aware of any order having been issued by either of said courts pertaining to the matters involved in this cause. Nevertheless, respondents believe they are sufficiently apprised of the relief sought herein by petitioner, and make response accordingly.

II

On the 16th day of March, A. D. 1960 the Grand Jury of Harris County, Texas returned a joint indictment against petitioner RICHARD M. SMITH and one ALLAN Q. TAYLOR accusing them jointly of the felony offense of theft by false pretext of some $42,000.00 from one Dora M. Brannan, alleged to have been committed on or about the 26th day of May, A. D. 1959, which indictment is now pending in the 180th District Court of Harris County, Texas (respondent HOOEY being Presiding Judge thereof) in Cause No. 90,871 upon the docket of said court. Pursuant to said indictment as aforesaid, warrants for the arrest of petitioner SMITH and his co-defendant TAYLOR were promptly

issued to the Sheriff of Harris County, Texas. The Sheriff became informed that petitioner was in the custody of the Attorney General of the United States at Leavenworth, Kansas, whereupon the Sheriff by letter dated the 5th day of May, A. D. 1960 notified the Warden of the United States Penitentiary at Leavenworth, Kansas of the fact that said warrant of arrest was outstanding, and asked for notice of "the minimum release date", which date is believed to be January 6, 1970.

III

By letter dated March 17, 1961 petitioner requested a speedy trial, and in reply thereto was notified that he would be afforded a trial within two weeks of any date petitioner might specify at which he could be present. Since that time, by various letters, and more formal so called "motions", petitioner has asked either for a speedy trial or dismissal of the indictment. At no time has either of these respondents received any notice of any date at which petitioner could be present for trial.

IV

These respondents are ready, willing, able and anxious to afford petitioner a trial within two weeks of any date he may specify at which he will be present.

V

Since the Attorney General of the United States may have interest in this cause, a copy of this response is being furnished him, with the thought that he may care to specify a date on which petitioner may be present for trial. In view of the fact that petitioner's co-defendant TAYLOR is likewise believed to be in the custody of the Attorney General at Atlanta, Georgia, the Attorney General may desire to make available both petitioner and his co-defendant TAYLOR on the same date for the possibility of a joint trial.

WHEREFORE, respondents pray that the petition for certiorari be dismissed or denied as to the Court may seem proper.

Respectfully submitted,

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Texas Statutes

APPENDIX B

Memorandum for the United States

By order of March 4, 1968, this Court invited the views of the United States in this case, in which petitioner has sought a writ of mandamus directed to respondent, Judge of the Criminal District Court of Harris County, Texas, to compel him to dismiss an indictment returned in that court against petitioner on March 16, 1960. Since April 1960, petitioner has been a federal prisoner in custody of the United States at Leavenworth Penitentiary, Leavenworth, Kansas. The District Attorney of Harris County, Texas, in response to the petition, states that petitioner first requested a speedy trial on March 17, 1961, and that, in reply thereto, petitioner was notified that he would be afforded a trial within two weeks of any date petitioner might specify at which he could be present. The prosecutor served a copy of his response to the instant petition upon the Attorney General "with the thought that he may care to specify a date on which petitioner may be present for trial."

It is the policy of the United States Bureau of Prisons to encourage the expeditious disposition of prosecutions in state courts against federal prisoners. The normal procedure under which production is effected is pursuant to a writ *ad prosequendum* from the state court. Almost invariably, the United States has complied with such writs and extended its cooperation to the state authorities. The Bureau of Prisons informs us that removals are normally made by United States marshals, with the expenses borne by the state authorities. In some instances, to mitigate the cost to the state, the Bureau of Prisons has removed an inmate to a federal facility close to the site of prosecution. In a relatively small number of instances, prisoners have been produced pursuant to 18 U.S.C. 4085, which provides in part:

> Whenever any federal prisoner has been indicted, informed against, or convicted of a felony in a court of record of any State or the District of Columbia, the Attorney General shall, if he finds it in the public interest to do so, upon the request of the Governor or the executive authority thereof, and upon the presentation of a certified copy of such indictment, information or judgment of conviction, cause such a person, prior to his release, to be transferred to a penal or correctional institution within such State or District.

The Bureau of Prisons does not, however, consider that it is its function to determine the date of trial in a state court. Occasionally, at the request of the prisoner or upon his inquiry, the Bureau of Prisons has itself communicated with a local prosecutor, urging the disposition of pending charges and advising that the United States will produce the prisoner pursuant to a writ *ad prosequendum*. In this case, we are advised by the Bureau of Prisons that, except for a detainer filed by the sheriff of Harris County, their files reflect no correspondence from the District Attorney of Harris County with respect to petitioner. Nor did petitioner request any assistance from the United States Bureau of Prisons.

In short, the Bureau of Prisons would doubtless have made the prisoner available if a writ of *habeas corpus ad prosequendum* had been issued by the state court. It does appear, however, that the State at any point sought to initiate that procedure in this case.

Respectfully submitted,

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1968.